

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 6524 of 2019

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Murlidhar Mishra S/o Late Dhruva Narayan Mishra Resident of Chopra
Bazar,P.S- Jankinagar,District- Purnia

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Panchayat Raj,Government of Bihar,Patna
2. The Secretary Department of Panchayat Raj,Government of Bihar,Patna
3. The District Officer Purnia
4. The District Panchayat Raj Officer, Purnia
5. The Sub Divisional Officer, Banmankhi,Purnia
6. The Block Development Officer Banmankhi, Purnia
7. The Nodal Officer-B.W.O Banmankhi,Purnia
8. The Sarpanch,Gram Kachhari Ramnagar Farsahi, Milik, Block-Banmankhi, Purnia
9. The Secretary,Gram Kachhari Ramnagar Farasahi,Milik, Block Banmankhi,Purnia
10. Harinandan Yadav son of Baldeo Yadav Resident of Pipra,PS-Banmankhi, Distt. Purnia

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Sharda Nand Mishra,
Ms Mira Kumari, Advocates
For the Respondent/s : Mr Rakesh Kumar Ranjan, AC to GA V

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 17-08-2022

Heard learned counsel for the petitioner and the learned
counsel for the respondents.

2 The petitioner is aggrieved by cancellation of his
selection as Nyaya Mitra as per order dated 30.11.2007.
Submission is that the Sub Divisional Officer, Banmankhi has



cancelled the selection on basis of a complaint which was time barred in view of the specific limitation prescribed in Clause 12 of the Bihar Gram Katchahry Nyaya Mitra (Employment, Service Conditions and Duties) Rules, 2007 (for brevity, 2007 Rules). Since the selection is of 30.11.2007, the complaint dated 04.04.2008 could not have been acted upon. The petitioner, therefore, has sought quashing of the order dated 22.09.2017 passed by the Collector in Miscellaneous Appeal Case No 77 of 2008 filed by the petitioner as also the order of the Sub Divisional Officer, Banmankhi dated 21.05.2008 passed on the complaint dated 04.04.2008 in Miscellaneous Case No 6 of 2007 – 2008 cancelling the petitioner's selection as Nyaya Mitra of Gram Katchahry, Ramnagar.

3 The learned State Counsel submits that the petitioner's selection was by issuing a notice only to the petitioner. From the averments made in the writ petition and the documents on record, it is obvious that no panel was prepared, as required under the selection procedure prescribed in the 2007 Rules. The procedure for employment contained in Rule 6 of the 2007 Rules mandates preparation of a panel. The same has not been done. Therefore, having violated the provisions of the Rules of 2007, the petitioner cannot be heard to claim a right arising out of the same Rules of



2007 based on the limitation for filing a complaint, since the selection itself is clandestine as per the records. It is quite obvious that complaint could have been lodged only once the petitioner's illegal selection came to the knowledge of the complainant.

4 The petitioner, by way of rejoinder, has brought on record alleged Aam Sabha proceedings. In support of his selection, the petitioner's counsel has drawn attention of the Court towards the Resolutions contained in the alleged proceedings of the Aam Sabha maintained in a register. Submission is that after following the entire procedure, the selection has been made. Learned counsel for the petitioner, however, is not in a position to show that a panel was prepared from the proceedings, which have been brought on record, namely, Resolution No 10 dated 29.11.2007. It is obvious that the petitioner was the only person considered for the selection in question and, therefore, the selection is prima facie dehors the procedure prescribed in the 2007 Rules. That being so, the objection raised by the petitioner regarding the complaint, being time barred, is rejected.

5 The petitioner's selection, being contrary to the procedure prescribed under the Rules of 2007, this Court would refuse to exercise its equitable writ jurisdiction to quash an order so as to revive an illegality having regard to the law laid down by



this Court in this regard in the case of *Bhartiya Seva Samaj Trust & Another -Versus- Yogeshbhai Ambalal Patel & Another*, reported in (2012) 9 Supreme Court Cases 310, Paragraph 14 of which reads as follows:

14. It is a settled legal proposition that the court should not set aside the order which appears to be illegal, if its effect is to revive another illegal order. It is for the reason that in such an eventuality the illegality would perpetuate and it would put a premium to the undeserving party/person. (Vide Gadde Venkateswara Rao v. Govt. of A.P.⁴, Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar⁵, Mallikarjuna Mudhagal Nagappa v. State of Karnataka⁶, Chandra Singh v. State of Rajasthan⁷ and State of Uttaranchal v. Ajit Singh Bhola⁸.)

6 In view of above consideration, no case is made out for interfering with the order dated 30.11.2007 by the Sub Divisional Officer, Banmankhi.

7 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/	AFR
CAV DATE	NA
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